IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3006 OF 2005

M/s.R. R. Constructions & Ors. ...Petitioners.

Versus

Shri Anand C-op. Bank Ltd. ...Respondent.

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Ms.Jyoti Chavan for the Petitioners.

Mr. R.D. Soni i/b. Ram & Co. for the Respondent.

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**CORAM : A. P. SHAH AND**

**DR. D.Y. CHANDRACHUD, JJ.**

July 12, 2005.

**P.C.:**

The reliefs that have been sought in these proceedings are to the effect that (i) An auction notice dated 17th April 2005 in respect of the bungalow of the Petitioner situated at Survey No.81/1, Sudarshan Nagar, Pimple Gurav, Pune, be quashed and set aside; (ii) The Respondents be directed to hand over possession of the bungalow to the Petitioner; and (iii) In the event that the sale of the bungalow has been completed, it be declared void.

2. The First Respondent issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the Petitioner on 2nd January 2004 which was followed by a notice under Section 13(4) of 22nd April 2004. In an appeal filed before the Debts Recovery Tribunal under Section 17 of the Act, the action taken by the Bank under Section 13(4) was set aside on 6th September 2004 by the Debts Recovery Tribunal, Pune on the ground that there was a want of due service of the notice upon the Petitioner. Thereafter, a fresh notice under Section 13(2) was issued on 16th September 2004 followed by a notice under Section 13(4) on 7th January 2005.

3. The Petitioner has an alternate remedy against measures taken under Section 13(4), before the Debts Recovery Tribunal. In the circumstances, we do not consider it appropriate to entertain this petition and are of the view that the Petitioner should be relegated to the remedy available before the Debts Recovery Tribunal. Counsel appearing on behalf of the First Respondent has stated fairly that in

the event that an appeal is filed before the Tribunal within such period of time as this Court may determine, First Respondent shall not raise the bar of limitation. In the circumstances, there shall be a direction to the effect that in the event that the Petitioner lodges an appeal before the Debts Recovery Tribunal on or before 31st October 2005, the First Respondent shall not raise the bar of limitation, and the appeal shall be heard and disposed of on merits.

4. The challenge to the auction notice dated 17th April 2005 is rendered infructuous since it has been stated that the auction could not be completed for want of bids. In so far as the prayer for handing over of possession is concerned, no such relief can be granted at the present stage in view of the fact that the Petitioner is being relegated to pursue the remedies available in law before the Debts Recovery Tribunal. While disposing of the petition, we clarify that all the rights and contentions of the parties are kept open to be urged before the Tribunal. This Court has been apprised of the fact that a recovery certificate in the amount of Rs.12,49,581/- has been issued under Section 101 of the Maharashtra Co-operative Societies' Act, 1960, on

15th July 2005. We clarify that since those proceedings do not form the subject matter of the petition before the Court, we are not expressing any view or rendering any finding in regard thereto. We also clarify that the attachment which has been levied is not disturbed and it would be open to the Petitioner to take appropriate steps available in law. The petition is accordingly disposed of.

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